

WAYNE COUNTY RULES OF PROBATE

Passed by Wayne County Bar Association Effective October 30, 1997

WAYNE COUNTY LOCAL PROBATE RULES

The following Rules of Court, hereafter to be cited as "Local Probate Rules," are hereby adopted and the same shall become effective on and after the 1st day of November, 1997.

LOCAL PROBATE RULE 1

Notice

1.1 Whenever notice by publication and/or written notice by U.S. Mail is required to be given, the attorney shall prepare such notice and shall give sufficient numbers of the same to the Clerk who shall ensure that such notice is properly published and/or served by Certified mail, return receipt requested, or First Class Mail, as required by the Statute. It shall also be the attorney's responsibility to provide the Clerk with addressed and stamped envelopes when notice is to be made by First Class Mail.

1.2 Copies of petitions shall be sent with all notices where the hearing involved arises from the matters contained in the petition.

1.3 Notice of the opening of an estate shall be sent by First Class United States Mail to all readily ascertainable creditors.

1.4 On the filing with the Clerk by the personal representative or guardian of any petition, application, complaint, partial report, final report, or any report that requires fixing of date and place of hearing of same by the Court and giving notice thereof to any or all interested persons as required by law or order of the Court, the Clerk shall forthwith fix the date and place of hearing, by endorsement on the same, and shall give, for such personal representative or guardian, the required notice.

The Clerk shall then also make and record on the proper order book on the date of the filing of such petition or report, an order by the court fixing the date and place of hearing of such petition or report, the same as fixed thereon by the Clerk, and directing the Clerk to give for the personal representative or guardian the required notice.

1.5 The Wayne County Scheduling Clerk will accept calendaring responsibilities concerning notification to all personal representatives and guardians of the due date of any statutorily required inventory or accounting. A copy of such notice of due date will be mailed to the attorney of record for the personal representative or guardian.

LOCAL PROBATE RULE 2

Filing of Pleadings

2.1 Routine pleadings, such as Inventories, Inheritance Tax Schedules, and Final Reports, may be filed with the Clerk for transmittal to the Court.

2.2 All attorneys are required to prepare orders for all proceedings except when expressly directed otherwise by the Court.

2.3 Every pleading, including Inventories, Petitions, and Accountings, filed in an Estate or Guardianship, shall be signed and verified by the fiduciary and signed by the attorney for the fiduciary.

2.4 All pleadings filed shall contain the attorney's name, address, telephone number, and attorney's Registration Number.

2.5 The initial petition to open an Estate or Guardianship shall contain the name, address, social security number and date of birth of the fiduciary, if a person.

LOCAL PROBATE RULE 3

Bond

3.1 In every Estate and guardianship, the fiduciary, prior to the issuance of letters, shall file a corporate surety bond not less than the value of the personal property to be administered, plus the probable value of annual rents and profits of all property of the estate in such amount as shall be set by the Court, except as hereafter provided:

A. Where, under the terms of the Will, the testator expresses an intention that the bond be waived, the Court shall set a bond, if any, adequate to protect creditors, tax authorities, and devisees.

B. Where the fiduciary is an heir or legatee of the estate, the bond may be reduced by such fiduciary's share of the estate.

C. Where the heirs or legatees have filed a written request that the fiduciary serve without bond, the bond, if any, may be set in the amount adequate to protect the rights of the creditors and tax authorities only.

D. In an unsupervised estate, bond may be set at the discretion of the Court.

E. No bond shall be required in any supervised estate or guardianship in which a corporate banking fiduciary, qualified by law to serve as such, is either the fiduciary or one of several co-fiduciaries.

F. Where, in the opinion of the Court, a surety bond may be safely waived, the Court may require the Personal Representative to file an Oath and Acceptance in lieu of a corporate surety bond.

3.2 In lieu of a bond as required by Rule 3.1, a fiduciary may restrict transfer of all or part of the estate or guardianship liquid assets by placing those assets in a federally-insured financial institution with the following restriction placed on the face of the account or document: NO PRINCIPAL OR INTEREST SHALL BE WITHDRAWN WITHOUT WRITTEN ORDER OF COURT OF , INDIANA.

3.3 All petitions to open an estate or guardianship shall set forth the probable value of the personal property plus the estimated annual rents and profits to be derived from the property in the estate or guardianship.

LOCAL PROBATE RULE 4

Inventory

4.1 An inventory shall be filed in duplicate by the fiduciary in all estates and guardianships, except unsupervised estates, within sixty (60) days; Guardianships within ninety (90) days for permanent guardians; and, within thirty (30) days for temporary guardians. All times relate to the appointment of the fiduciary.

4.2 In the event a partial inventory is filed, all subsequent inventories must contain a recapitulation of prior inventories.

LOCAL PROBATE RULE 5

Sale of Real Estate

5.1 When a Petition to Sell Real Estate is filed in a supervised estate or guardianship, it shall be accompanied by a written professional appraisal setting forth the fair market value of said real estate, unless such an appraisal was previously filed with the Inventory.

5.2 All appraisals required by Rule 5.1 shall be made within one (1) year of the date of the Petition to Sell Real Estate.

5.3 All deeds submitted to the Court for approval in either supervised estate or guardianship proceedings shall be submitted with the Report of Sale of Real Estate or at the time of the hearing on the Final Account. All such deeds shall be signed by the personal representative or guardian and notarized prior to the submission. Complete copies of such deeds shall be filed with the Court at the time the original is submitted for approval.

5.4 In a supervised estate, whenever a Final Decree reflects that real estate located in any county in the State of Indiana has vested in heirs or devisees, the Decree shall be

recorded with the Recorder of the County in which any such real estate is located and evidence of said recording shall be provided to the Court with the Supplemental Report.

LOCAL PROBATE RULE 6

Sale of Personal Property

6.1 In all supervised estates and guardianships, no Petition to Sell Personal Property shall be granted unless a written appraisal prepared by a person competent to appraise such property and setting forth the Fair Market Value thereof, is filed with the Court at the time of the filing of the Petition to Sell, unless such appraisal was filed with the Inventory.

6.2 All appraisals required by Rule 6.1 shall be made within one (1) year of the date of the Petition to Sell.

6.3 No written appraisal shall be required for the sale of assets which are traded in a market and the value of which is readily ascertainable. Such assets include, but are not limited to, stocks, bonds, mutual funds, commodities, and precious metals.

LOCAL PROBATE RULE 7

Claims

7.1 Five (5) months and fifteen (15) days after the date of the first published notice to creditors, the fiduciary, or the fiduciary's attorney, shall examine the Claim Docket and shall allow or disallow each claim filed against the estate.

LOCAL PROBATE RULE 8

Accountings

8.1 Whenever an estate cannot be closed within one (1) year, an intermediate account shall be filed with the Court within thirty (30) days after the expiration of one (1) year and each succeeding year thereafter. Such accounting shall comply with the provisions of I.C. 29-1-16-4 and 29-1-16-6:

A. Shall state facts showing why the estate cannot be closed and an estimated date of closing.

B. Shall propose partial distribution of the estate to the extent that partial distribution can be made without prejudice to distributees and claimants.

8.2 All guardianship accounts shall contain a certification of an officer of any financial institution in which guardianship assets are held, verifying the account balance.

8.3 All Social Security or Medicare benefits received on behalf of an incapacitated person shall be included and accounted for in the guardianship accountings unless Court approval has been previously granted to allow said funds to be paid directly to a residential or health care facility.

8.4 In all supervised estate and guardianship accountings, vouchers or canceled checks for the expenditures claimed shall be filed with the accounting. No affidavits in lieu of vouchers or canceled checks will be accepted from individual fiduciaries. An affidavit in lieu of vouchers or canceled checks may be accepted from a state or federally chartered financial institution who serves as a fiduciary, provided the financial institution retains the vouchers or canceled checks on file or by electronic recording device and make same available to interested parties upon court order. The Court may require such institution to provide a Certification from its Internal Audit Department verifying the accuracy of the accounting.

8.5 In all supervised estate and guardianship accountings, a notation shall be placed by each expenditure indicating the reason for or nature of the expenditure.

EXAMPLE:

Bogata Drugs - Prescription drugs

Dr. John Jones - Medical services

Sam Smith - repair roof of home at 162 Maple Street, Anytown, Indiana

Tendercare Nursing Home - Nursing home care

8.6 All accountings to the Court shall contain an itemized statement of the assets on hand.

8.7 Receipts or canceled checks for all final distributions shall be filed either in the final report, or a supplemental report, before discharge will be granted by the Court.

8.8 All accountings shall follow the prescribed statutory format. Informal, handwritten, or transactional accountings will not be accepted.

8.9 All Court costs shall be paid and all claims satisfied and released before the hearing on the Final Account and a Clerk's Certification thereof shall be filed with the Court before such Final Account shall be approved.

8.10 The Federal Estate Tax Closing Letter and the Indiana Inheritance Tax Closing Letter (or the countersigned receipt), or a photocopy thereof, showing payment of all Federal Estate and/or Indiana Inheritance Tax liability payable by reason of a decedent's

death, executed by the Internal Revenue Service or the Indiana Department of Revenue, shall be filed prior to entry of an Order on the Final Account.

8.11 In those estates where no Indiana inheritance tax is due, the Affidavit required to be filed with the local Assessor's Office shall also be filed under the estate's caption and cause number with the Clerk of the Court.

LOCAL PROBATE RULE 9

Fees of Attorney and Fiduciary

9.1 No fees for fiduciaries or attorneys shall be approved in any supervised estate or guardianship until the Court has approved a fee petition filed by the attorney for the estate.

9.2 A guardian or guardian's attorney may petition for fees at the time of filing an inventory. No further petition for fees may be filed until a biennial, annual, or final accounting has been filed.

9.3 No attorney of fiduciary fees will be determined and authorized for payment by the Court in any Unsupervised Administration of a decedent's estate.

9.4 Where contracts for legal services have been entered into prior or subsequent to the opening of an estate or guardianship, the Court reserves the right to approve or disapprove the fee contracts consistent with this Court's fee guidelines.

9.5 Rule 1.5 of the Rule of Professional Conduct has been adopted by the Supreme Court of Indiana to govern attorney fees. All fees charged by attorneys my be reasonable. The rule further enumerates the factors to be considered, which are as follows:

- (1) the time and labor required, the novelty and difficulty of questions involved, and the skills requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation and ability of the lawyer or lawyers performing the services.

The following guidelines are not to be used as a substitution for the attorney's determination of what a reasonable fee would be in a given situation. Rather, the guidelines are established to assist attorneys and fiduciaries by outlining what the Court will deem to be reasonable based upon the factors contained in Rule of Professional Conduct 1.5.

The basic guideline amounts are based upon usual and ordinary services. The guidelines also will assist in calculations of fees generated by the provisions of extraordinary services.

9.6 Unjustified delays in carrying out duties by the fiduciary and/or attorney may result in a reduction of fees.

LOCAL PROBATE RULE 10

Unsupervised Administration

10.1 Notwithstanding I.C. 29-1-7.5-2, no petition for administration without Court supervision shall be granted unless all of the requirements of I.C. 29-11-7.5-2(a) have been met and a written consent to unsupervised administration has been signed by all of the heirs and filed with the court.

10.2 All Court costs shall be paid and all claims satisfied and released on or before the date of the filing of the Closing Affidavit, and a Clerk's Certification thereof shall be filed with the Court at the time such Closing Affidavit is filed with the Court.

10.3 Every Closing Affidavit shall comply with Local Probate Rule 8.10.

10.4 No Orders as to attorneys fees, compliance regarding notice of administration to decedent's creditor's, or other orders shall be entered by the Court in unsupervised estates except that the Court shall enter an Order approving the verified closing statement as required by I.C. 29-1-7.5-4.

LOCAL PROBATE RULE 11

Guardianships

11.1 In all guardianship matters seeking to declare an adult incapacitated for any reason, the incapacitated person shall be present at the hearing or sufficient evidence shall be presented showing that the incapacitated person is unable to appear.

11.2 In all guardianship matters seeking to declare an adult incapacitated for any reason, a Physician's Report by the doctor treating the alleged incapacitated person, or such

additional evidence as the Court shall require, shall be presented to the Court at the time the petition is filed or on the hearing date. No determination will be made without a supporting medical report or testimony.

11.3 Current reports filed by a guardian of the personal shall state the present residence of the incapacitated person and his general welfare. If the incapacitated person is an adult, a Report of a treating physician shall be filed with the current report, verifying that the incapacity of the person remains unchanged since the date the guardianship was established or the date of the last current report and that the living arrangements for the incapacitated person are appropriate.

11.4 In every petition for the appointment of a guardian of the person of a minor child, the following information shall be given:

A. The child's present address.

B. The places where the child has lived within the past two (2) years and the names and present addresses of persons with whom the child has lived during that period.

C. Whether, to Petitioner's knowledge, any other litigation is pending concerning the custody of the child in this or any other state.

D. Whether, to Petitioner's knowledge, any person not a party to this guardianship proceeding has physical custody of the child or claims to have custody or visitation rights with respect to the child.

11.5 Nothing herein shall be deemed as amending, superseding or altering the Probate Rules and Regulations promulgated by the Veteran's Administration of the United States of America, and every fiduciary and attorney shall comply with same, if applicable.

11.6 In all estate and guardianship matters involving either a claim for wrongful death or personal injury, the civil case and the corresponding guardianship or probate proceedings will be filed in the same Court without regard to the usual computer filing system which governs the filing of all other actions.

LOCAL PROBATE RULE 12

Miscellaneous

12.1 (a) In those matters for which the Court has authority to grant an extension of time, the Court shall automatically grant one thirty (30) day extension upon the filing of a written petition on or before the otherwise applicable deadline.

(B) Any additional extension of time may be granted only upon the filing of an additional petition setting forth such good cause.

12.2 Procedure for past-due filings and reports:

(A) First Notice: A postcard notice will be mailed to the attorney when the matter becomes past due.

(B) Second Notice: If there is no response within thirty (30) days of the mailing of the First Notice, a letter notice from the Court will be mailed requesting compliance within fifteen (15) days.

(C) Court Order: If there is no response within fifteen (15) days of the mailing of the Second Notice, a Court order to show cause will be issued. Both the attorney and fiduciary must appear at the date and time specified in the Court Order.

(Note Rule 9.6 may be invoked in any of the above circumstances.)

12.3 In all probate matters, two (2) original orders shall be presented to the Clerk at the time of filing.

PROBATE EXHIBIT A

COMPUTATION OF FEES

ESTATE OF

PROBATE NO.

1. Inventories Value of Estate \$
2. Income During Administration \$
3. Assets Omitted from Inventory \$

TOTAL \$

4. Total Gross Estate - Federal Estate Tax \$

PERSONAL REPRESENTATIVE ATTORNEY

First \$100,000 - 5% \$ 6% \$

Next \$200,000 - 4% \$ 5% \$

Next \$700,000 - 1% \$ 3% \$

Excess of

\$1,000,000 - 1/2% \$ 2% \$

Total \$ \$

ADDITIONAL FEES

CLAIMED \$ \$

EXPLANATION OF ADDITIONAL FEES CLAIMED:

If additional fees are claimed, attach a detailed statement showing the nature of the services rendered, the time involved and the reasons why the same should generate additional fees. Please provide such additional information and supportive evidence as you think will enable the Court to weigh the claim for fees.

ATTORNEY & PERSONAL REPRESENTATIVE FEE GUIDELINES

I. Estate Administration:

Gross estate services are considered to normally include: probating the Will, opening the estate, qualifying the personal representative, preparing and filing the Inventory, paying claims, collecting assets, preparing and filing non-extraordinary petitions, preparing and filing of Fiduciary Income Tax Return, preparing and filing all tax returns and schedules, obtaining Court Orders thereon, and paying the taxes, preparing and filing the Final Report, obtaining Order approving same, distributing assets, obtaining discharge of the personal representative, and preparing and serving all notices on interested parties throughout the proceedings. The list shall not be considered to be exclusive.

A. Gross Estate - Minimum Fee of \$800.00

Attorney:

First \$100,000.00, not to exceed.....6%

Next \$200,000.00, not to exceed.....5%

Next \$700,000.00, not to exceed.....3%

Excess of \$1,000,000.00, not to exceed.....2%

Fiduciary:

First \$100,000.00, not to exceed.....5%

Next \$200,000.00, not to exceed.....4%

Next \$700,000.00, not to exceed.....1%

Excess of \$1,000,000.00, not to exceed.....1/2%

B. Miscellaneous - Extraordinary Services:

1. Indiana Inheritance Tax Scheduled - (preparation and filing only) (To be applied only to non-administered property):

Attorney fees shall be one percent (1%) of the first \$100,000.00 of the non-administered assets of gross estate as determined for Indiana Inheritance Tax purposes:

Plus 3/4 of 1% of the next \$150,000.00 of non-administered assets of said gross estate.
1/2 of one percent (1%) on all non-administered assets of said gross estate in excess of \$250,000.00. Personal Representative's fees shall be one-third (1/3) of the attorney fees.

2. Federal Estate Tax Returns - (To be applied only to non-administered property, to be based only on assets not listed on Indiana Inheritance Tax Schedule).

A base attorney fee of\$750.00 or

One percent (1%) of the first \$100,000.00 of the non-administered assets of the said gross estate as determined for Federal Estate Tax purposes,

PLUS, 3/4 of one percent (1%) of the next \$150,000.00 of non-administered assets of said gross estate,

PLUS, 1/2 of one percent (1%) on all non-administered assets of said gross estate in excess of \$250,000.00.

Personal Representative's fees shall be one-third (1/3) of attorney fees.

3. Other than as provided above.....Hourly Rate

(Attorney's expertise in probate matters will be considered by the Court in determining the applicable hourly rate)

II. Wrongful Death Administration:

The Court recognizes that in most instances a retainer or contingent fee agreement is an appropriate method by which legal services can be provided in wrongful death claims. Accordingly, fees shall be allowed under such agreements if, at the time of settlement of the claim, it is shown to the Court's satisfaction:

1. That the Personal Representative was, prior to entering into such agreement, fully informed as to all aspects of the arrangement.
2. That the agreement is fair and reasonable.
3. That the fee sought is fair and reasonable.

III. In General:

A. Extraordinary Fee Requests

Fee petitions requesting extraordinary fees must set forth services rendered with specificity. Extraordinary services may include: sale of personal property, sale of real property, partial distribution, will contest actions, contesting claims, adjusting tax matters, contested hearings, petition for instructions, heirship determinations, generating additional income for the estate, etc. All such petitions will be set for hearing, with notice to all interested parties. If all interested parties sign a waiver and consent stating they have been advised the additional fee request exceeds the Court's guidelines and that the services as detailed are extraordinary, the Court may, in its discretion, determine if a hearing is required. An acceptable form of waiver is attached.

B. Unsupervised Estates

The Court will determine and allow fees in an unsupervised administration.

IV. Guardianship Administration:

Fees for the administration of guardianships shall be based on an hourly rate to be approved by the Court for both the attorney and the guardian. The Court will consider the attorney's and guardian's expertise in approving the hourly rate.